

File Numbers: EB-10-CG-0282;
EB-FIELDNER-12-00004396
NAL/Acct. No.: 201132320002
FRN: 0003773595
Facility ID Nos. 40702 and 40703

⁵ *NAL*, 26 FCC Rcd at 6578.

surrounding the property on which the antenna structures were located.⁶ Mattoon Broadcasting responded to the *NAL* on June 2, 2011.

3. In its response to the *NAL*, Mattoon Broadcasting does not dispute the findings in the *NAL*, but requests a reduction or cancellation of the proposed forfeiture claiming that: (1) new fences had been installed around the antenna structures within two weeks of the agent's inspection; (2) the General Manager of Mattoon Broadcasting "spend[s] a substantial amount of time each day at [the] main studio building. . .[but] was out of town for a few days from July 20-23, 2010," "medical problems caused the absence of another staff member," and two other staff members come and go throughout the day; and (3) Mattoon Broadcasting is facing financial difficulties and is unable to pay the proposed forfeiture."⁷

III. DISCUSSION

4. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Communications Act of 1934, as amended (Act),⁸ Section 1.80 of the Rules,⁹ and the *Forfeiture Policy Statement*.¹⁰ In examining Mattoon Broadcasting's response, Section 503(b)(2)(E) of the Act requires that the Commission take into account the nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.¹¹ As discussed below, we have considered Mattoon Broadcasting's response in light of these statutory factors, and find that a reduction of the forfeiture is warranted based on Mattoon Broadcasting's inability to pay.

5. We affirm the findings in the *NAL* that Mattoon Broadcasting willfully and repeatedly violated Section 73.49 of the Rules. Section 73.49 of the Rules requires that antenna structures having radio frequency potential at the base must be enclosed within effective locked fences or other enclosures.¹² On July 22, 2010, an agent from the Chicago Office observed that the fences surrounding each of the antenna structures had either sections that were falling down or sections that were completely missing. Based on the degree of deterioration, agents concluded that the fences had been in disrepair for an extended period of time, a fact which Mattoon Broadcasting does not dispute. With regard to Mattoon Broadcasting's repairs to the fencing after the agent's inspection, the Commission has long held that corrective action taken to come into compliance with the Rules is expected, and such corrective action does not nullify or mitigate prior violations or associated forfeiture liability.¹³ Thus, based on the totality of the circumstances, we find that Mattoon Broadcasting willfully and repeatedly violated Section 73.49 of the Rules.

⁶ *Id.*

⁷ Letter from James R. Livesay II, President and General Manager of Mattoon Broadcasting Company, to the Chicago Office, Northeast Region, Enforcement Bureau at 1-2 (dated June 2, 2011) (on file in EB-10-CG-0282) (*Response*).

⁸ 47 U.S.C. § 503(b).

⁹ 47 C.F.R. § 1.80.

¹⁰ *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087 (1997), *recons. denied*, 15 FCC Rcd 303 (1999) (*Forfeiture Policy Statement*).

¹¹ 47 U.S.C. § 503(b)(2)(E).

¹² 47 C.F.R. § 73.49.

¹³ See *Consolidated Radio, Inc.*, 26 FCC Rcd 15173 (Enf. Bur. 2011) citing *International Broadcasting Corporation*, Order on Review, 25 FCC Rcd 1538 (2010).

6. We also affirm the findings in the *NAL* that Mattoon Broadcasting willfully and repeatedly violated Section 73.1125(a) of the Rules. Section 73.1125(a) of the Rules requires broadcast stations to maintain a main studio.¹⁴ The Commission has interpreted Section 73.1125 (also known as the “Main Studio Rule”) to require, among other things, that a licensee maintain a “meaningful management and staff presence” at its main studio.¹⁵ Specifically, the Commission has found that a main studio “must, at a minimum, maintain full time managerial and full-time staff personnel.”¹⁶ Although management personnel need not be “chained to their desks” during normal business hours, they must “report to work at the main studio on a daily basis, spend a substantial amount of time there and...use the studio as a ‘home base.’”¹⁷ On July 21 and 22, 2010, an agent found, and Mattoon Broadcasting concedes, that no staff or management were present at the Stations’ main studio during normal business hours. Mattoon Broadcasting’s unsubstantiated claims that the General Manager as well as several other employees usually spend a substantial amount of time at the main studio does not change the fact that, on two days, the agent found no staff or management present at the main studio. Accordingly, we find that Mattoon Broadcasting willfully and repeatedly violated Section 73.1125(a) of the Rules by failing to maintain a meaningful presence at the Stations’ main studio.

7. We grant, however, Mattoon Broadcasting’s request for a reduction based on its inability to pay. With regard to an individual or entity’s inability to pay claim, the Commission has determined that, in general, gross revenues are the best indicator of an ability to pay a forfeiture.¹⁸ Based on the financial documents provided by Mattoon Broadcasting, we find sufficient basis to reduce the forfeiture to \$500. However, we caution Mattoon Broadcasting that a party’s inability to pay is only one factor in our forfeiture calculation analysis, and is not dispositive.¹⁹ We have previously rejected inability to pay claims in cases of repeated or otherwise egregious violations.²⁰ Therefore, future violations of this kind

¹⁴ 47 C.F.R. § 73.1125.

¹⁵ *Amendment of Section 73.1125 and 73.1130 of the Commission’s Rules, the Main Studio and Program Origination Rules for Radio and Television Broadcast Stations*, Memorandum Opinion and Order, 3 F.C.C.R. 5024, 5026 (1988), *erratum issued*, 3 FCC Rcd 5717 (1988) (correcting language in n.29).

¹⁶ *See Jones Eastern of the Outer Banks, Inc.*, Memorandum Opinion and Order, 6 FCC Rcd 3615, 3616 (1991) (“*Jones Eastern*”) (noting that, “[t]his is not to say that the same staff person and manager must be assigned full-time to the main studio. Rather, there must be management and staff presence on a full-time basis during normal business hours to be considered ‘meaningful.’”) *clarified*, 7 FCC Rcd 6800 (1992) (“*Jones Eastern II*”). *See also Birach Broadcasting Corporation*, Notice of Apparent Liability, 25 FCC Rcd 2635 (Enf. Bur. 2010).

¹⁷ *Jones Eastern II*, 7 FCC Rcd at 6802.

¹⁸ *See Local Long Distance, Inc.*, Forfeiture Order, 16 FCC Rcd 24385 (2000) (forfeiture not deemed excessive where it represented approximately 7.9 percent of the violator’s gross revenues); *Hoosier Broadcasting Corporation*, Forfeiture Order, 15 FCC Rcd 8640 (2002) (forfeiture not deemed excessive where it represented approximately 7.6 percent of the violator’s gross revenues).

¹⁹ *See* 47 U.S.C. § 503(b)(2)(E) (requiring Commission to take into account the nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require).

²⁰ *Dexter Blake*, Memorandum Opinion and Order, 27 FCC Rcd 15087 (Enf. Bur. 2012), *aff’d in part*, Forfeiture Order, 25 FCC Rcd 10038 (Enf. Bur., Northeast Region 2010) (reducing forfeiture based on inability to pay, but warning that future violations of the same kind may not be reduced due to financial circumstances); *Kevin W. Bondy*, Forfeiture Order, 26 FCC Rcd 7840 (Enf. Bur., Western Region 2011) (holding that violator’s repeated acts of malicious and intentional interference outweigh evidence concerning his ability to pay) (petition for reconsideration pending); *Hodson Broadcasting Corp.*, Forfeiture Order, 24 FCC Rcd 13699 (Enf. Bur. 2009) (holding that permittee’s continued operation at variance with its construction permit constituted an intentional and continuous violation, which outweighed permittee’s evidence concerning its ability to pay the proposed forfeitures). *See* (continued....)

may result in significantly higher forfeitures that may not be reduced due to Mattoon Broadcasting's financial circumstances.

IV. ORDERING CLAUSES

8. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.111, 0.204, 0.311, 0.314, and 1.80(f)(4) of the Commission's rules, Mattoon Broadcasting Company **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of five hundred dollars (\$500) for violation of Sections 73.49 and 73.1125(a) of the Commission's rules.²¹

9. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within thirty (30) calendar days after the release date of this Forfeiture Order.²² If the forfeiture is not paid within the period specified, the case may be referred to the U.S. Department of Justice for enforcement of the forfeiture pursuant to Section 504(a) of the Act.²³ Mattoon Broadcasting Company shall send electronic notification of payment to NER-Response@fcc.gov on the date said payment is made. The payment must be made by check or similar instrument, wire transfer, or credit card, and must include the NAL/Account number and FRN referenced above. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.²⁴ When completing the FCC Form 159, enter the Account Number in block number 23A (call sign/other ID) and enter the letters "FORF" in block number 24A (payment type code). Below are additional instructions you should follow based on the form of payment you select:

- Payment by check or money order must be made payable to the order of the Federal Communications Commission. Such payments (along with the completed Form 159) must be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.
- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. To complete the wire transfer and ensure appropriate crediting of the wired funds, a completed Form 159 must be faxed to U.S. Bank at (314) 418-4232 on the same business day the wire transfer is initiated.
- Payment by credit card must be made by providing the required credit card information on FCC Form 159 and signing and dating the Form 159 to authorize the credit card payment. The completed Form 159 must then be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.

10. Any request for making full payment over time under an installment plan should be sent to: Chief Financial Officer—Financial Operations, Federal Communications Commission, 445 12th

(Continued from previous page) _____

Michael W. Perry, Forfeiture Order, 27 FCC Rcd 2281, 2284, para. 8 (2012) (reducing forfeiture based on inability to pay, but warning that future violations of the same kind may not be reduced due to financial circumstances).

²¹ 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.111, 0.204, 0.311, 0.314, 1.80(f)(4), 73.49, 73.1125(a).

²² 47 C.F.R. § 1.80.

²³ 47 U.S.C. § 504(a).

²⁴ An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

Street, S.W., Room 1-A625, Washington, D.C. 20554.²⁵ If you have questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

11. **IT IS FURTHER ORDERED** that a copy of this Forfeiture Order shall be sent by both First Class Mail and Certified Mail, Return Receipt Requested, to Mattoon Broadcasting Company at P.O. Box 322, Mattoon, Illinois 61938-0322 and 5746 E. Country Road 1000 N, North Route 45, Mattoon, Illinois, 61938.

FEDERAL COMMUNICATIONS COMMISSION

G. Michael Moffitt
Regional Director
Northeast Region
Enforcement Bureau

²⁵ See 47 C.F.R. § 1.1914.